

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Youghioghenny Communications Northeast, LLC d/b/a Pocket Communications

Date application filed with the Town Clerk: May 15, 2009

Nature of request: Request for Special Permit to install wireless communication antenna and equipment on top of an existing building, The Clark House, under Section 3.340.2 of the Zoning Bylaw

Address: 22 Lessey Street (Map 14A, Parcel 63, R-G, MPD and Dickinson National Register District)

Legal notice: Published on June 10 and June 17, 2009 in the Daily Hampshire Gazette and sent to abutters on June 8, 2009

Board members: Tom Simpson, Hilda Greenbaum, Albert Woodhull

Submissions:

- One (1) copy of the ZBA application, filed with the Town Clerk on May 15, 2009;
- One (1) copy of a completed Management Plan form;
- One (1) copy of a letter from Dewberry-Goodkind, Inc., dated May 8, 2009, identifying the cost of removing antenna and equipment;
- One (1) copy of a letter from Dewberry-Goodkind, Inc., dated May 13, 2009, identifying that the proposal is in accordance with the dimensional setbacks of Section 3.340.2 of the Zoning Bylaw;
- One (1) copy of a letter from Dewberry-Goodkind, Inc., dated May 1, 2009, identifying that the existing building is adequate to support the proposed improvements;
- One (1) copy of a Calculated Radio Frequency Emissions report, dated April 28, 2009, prepared by C Squared Systems, LLC;
- One (1) copy of photographic renderings prepared by Caron & Associates Design, LLC, dated May 5, 2009;
- One (1) copy of a Spectrum Manager Lease;
- One (1) copy of a map showing Pocket coverage plan without the proposed site;
- One (1) copy of a map showing Pocket coverage plan with the proposed site;
- One (1) copy of 11x17 site and construction plans prepared by Dewberry-Goodkind, Inc., dated May 12, 2009 (a full size copy of the plans are on file in the Planning Department office);
- One (1) copy of the Comprehensive Permit, dated July 17, 1979, for the Clark House, submitted by staff;

- One (1) copy of, ZBA FY2004-00045, ZBA FY2006-00011, ZBA FY2008-00015 and ZBA FY2009-00015;
- One (1) copy of a Town GIS map showing the existing Zoning District boundaries, submitted by staff.

Site Visit: June 22, 2009

Hilda Greenbaum and Albert Woodhull viewed the site with staff. Tom Simpson viewed the site separately. The applicant did not attend either site visit.

The following was observed:

- The location of the property at the eastern edge of the downtown area;
- The residential properties located to the east, the entrance of the property from the terminal end of Lessey Street and Sweetser Park to the South, commercial businesses and the Bangs Center to the west and the Ann Whalen Apartment building owned by the Amherst Housing Authority to the north;
- The existing six story, multi-unit residential structure with resident parking at the west side of the building;
- The view of the roof from the resident parking area.

Public Hearing: June 25, 2009

Brian Allen, the representative from Youghiogheny Communications Northeast, LLC d/b/a Pocket presented the application.

Mr. Allen stated the following:

- They are proposing to install three (3) wireless communication antennas on the top of the building at 22 Lessey Street, known as the Clark House;
- The antennas would be concealed in what is called a “false flue” attached to the back wall of the penthouse on the roof of the building;
- The antennas will be attached to the back wall of the penthouse, which is approximately 20 feet by 20 feet and approximately 10 feet tall;
- The applicant’s engineer designed the false flue to try to replicate existing smokestack flues that are currently located on the top of the penthouse;
- The false flue would be a fiberglass shroud that would house the antennas inside;
- The plans submitted with the application include elevations of the existing building depicting the proposed false flue and a series of photos which show the existing roof and simulate the roof with the proposed structure;
- The antennas are being located on this building to provide wireless coverage in the downtown area. The location would provide a connection to coverage provide by other locations where Pocket Communication’s antennas already exist, such as West Street, UMass and in Hadley;
- The application packet also included a Maximum Permissible Exposure (MPE) report which was well below the Federal Communication Commission (FCC) mandated guidelines;

- The application materials included a letter from the project engineer indicating that the cost of the removal of the antenna's would be approximately \$4,950 with an anticipated cost of removal of \$16,800 in 25 years;
- The applicant is asking the Board to waive the requirement for a bond since the location of the antennas are readily accessible from the building. No special equipment would be required to take them down if the antenna's were not in use and the cost associated with removal would be small;

Mr. Simpson asked the applicant to describe the location of the penthouse and the false flue and the height of the flue from the top of the roof.

Mr. Allen stated that the penthouse is approximately in the middle of the roof of the building. He noted that there are several existing vent smokestacks, air conditioning equipment and a television antenna currently on the roof of the penthouse. He stated that the existing vent smokestacks are about 6 feet tall and the proposed false flue would be approximately 12 feet tall - from the top of the penthouse roof.

Mr. Simpson asked the applicant to confirm that the antennas will be located inside the false flue and asked what the finish of the flue would be.

Mr. Allen stated that the antennas will be located inside of the false flue with a total of three antennas, each affixed to an interior side wall of the flue. He stated that the flue is constructed of fiberglass with an exterior finish that would be non-reflective. He added that they have tried to design it so that it would blend with the other structures on the roof of the building.

Mr. Allen stated that there will be two equipment cabinets attached to the exterior wall of the penthouse. The cabinets will be approximately 3 feet by 3 feet and 18 inches deep and will look like a 400 amp electrical service panel. He added that the cabinets will contain the power source and telephone connection mechanicals.

Mr. Simpson asked if other carriers could co-locate on this location.

Mr. Allen stated that other carriers could, however, there may be several reasons that might make the site less desirable to other carriers. First, he noted, that each carrier is required to provide a minimum of 10 feet of separation, either horizontally or vertically. Therefore, to add another carrier above the proposed, their antennas would have to be at least 10 feet taller. He added that there is ample space on the roof for other carriers but that other carriers would have to come to an agreement with the landlord of the building. He stated that Pocket has secured space on the building utilizing their current technology. Other carriers in the area have different technology that may or may not prevent them from considering this site.

Mr. Simpson asked why they are not proposing to co-locate on some of the other existing sites in the area.

Mr. Allen stated that he is aware of other wireless communication antennas on St. Brigids Catholic Church on North Pleasant Street and the Amherst College smokestack on College Street. He stated that the location of the steeple at St. Brigids would not fill the gap in service as the proposed site would. He stated that they have tried to contact Amherst College about going onto the smokestack, but they did not respond. He understands that the smokestack may be at or near its capacity for adding new equipment. He noted that Pocket Communication is located on existing towers in Hadley, near Stop and Shop, on the UMass campus near the wastewater treatment facility and on the existing tower on West Street, in Amherst. He stated that the engineers reviewed the existing buildings in the downtown area using coverage maps and determined that the proposed location would be one of the most suitable.

Ms. Greenbaum stated that the application appears to require a waiver from the co-location requirements of the Zoning Bylaw.

Mr. Allen stated that he believes the co-location requirements of the Zoning Bylaw are intended for specific new structures such as towers. He stated that the proposal seeks to install antennas onto the roof of an existing building and that the proposal is already co-locating by eliminating the need to create a new structure specifically for the antennas. He added that it may be possible for the roof to support other carriers, but that would be dependent upon the owners of the property.

Ms. Greenbaum inquired about the applicant's request for a waiver from submission of a removal bond. She stated that the letter from the applicant's engineer says that the cost would be greater than \$16,000 and noted that the cost could be considered significant to remove the antennas.

Mr. Allen stated that they are asking for the waiver from the bond requirement because the antennas will be located on the roof of the building. The property owners will have great incentive to require Pocket to remove the equipment if they are no longer in use and not drawing a rental fee. He added that Pocket has the removal of the equipment written into the agreement with the owners of the building.

Mr. Simpson said that he believes that the Board should still require the submission of a bond to properly ensure that there is a mechanism in place to remove the antenna, separate from an agreement with the applicant and owner.

Mr. Simpson asked if any members of the public would like to speak.

Joan Mason, Apartment 601, 22 Lessey Street, said she lives on the top floor and is closest to the proposed antennas. She expressed concern regarding the location of the antennas and asked whether the Zoning Board will consider the health and safety of residents in the building.

Mr. Simpson stated that the Zoning Board of Appeals is bound by certain requirements of the Federal Communication Commission laws that eliminate health risks as a rationale for rejecting a proposal for a wireless communication facility. He added that if the application has emissions that fall below the requirements of the FCC, then the local authorities are obligated to issue a permit.

He noted that the Board does have some discretion regarding some aesthetic and design issues, but ultimately must issue a permit or face violating the FCC act.

Ms. Greenbaum stated that the applicant submitted an emission report which says that the facility will be at 2% of the allowable emissions and that as long as the carrier can show a gap in service; the Board must issue the permit. She added that the Board can set reasonable conditions on its use, but cannot prohibit it.

Linda Greenbaum, 22 Lessey Street, stated that she has reviewed the 1996 Wireless Communication Act and that she believes that local boards can deny a request. She stated that the application does not consider the health and safety of those who reside in the building. She added that she believes that the FCC has set the emission standards very high and that as a resident, she is concerned with the possible health effects.

Walter Stephaniv, 16 Tyler Place, stated that his property directly abuts 22 Lessey Street. He stated that the proposed flue is visually offensive and will negatively impact the view from his property. He stated that a portion of the property is located in the Dickinson National Historic Register District and that this proposal is not compatible with the historic preservation of the area. He added concern regarding setting a precedent of allowing these antennas to be on every tall building.

Ms. Greenbaum asked Mr. Stephaniv if he had any ideas or recommendations as to how to help mitigate the visual impact.

Mr. Stephaniv stated that the best way to mitigate its impact is to not allow it on the building.

Ms. Greenbaum stated that they cannot deny the application. She added that the applicant has done a lot of research and design to propose the antennas in a structure that will blend in with the other elements on the roof of the building.

Claudette Budrow, Tyler Place, stated that she is concerned with the health of people nearby. She asked if the health of the neighbors is something that the Board is concerned with.

Mr. Woodhull stated that the Board is required to utilize the FCC regulations and emission guidelines. He added that the levels were controversial, but ultimately it was a decision of the FCC and the local authorities have to acknowledge those standards. He stated that the emission report submitted by the application shows levels that are very low.

Ms. Greenbaum asked Mr. Woodhull about the section of the report that discusses the emissions that would be directly below the roof. Mr. Woodhull stated that the report indicated low numbers and indicated that the signal is designed to send a signal up and out away from the building and that the signals would not be directed downward toward the residences.

Ms. Greenbaum MOVED to close the evidentiary portion of the public hearing. Mr. Woodhull seconded the motion and the Board VOTED to close the public hearing.

Public Meeting:

The Board determined that they are agreeable to the application. However, the Board identified that the design of the false flue could be modified to make it appear more aesthetically appropriate on the roof top. The Board reviewed photo simulations and identified that photo 11 showed that the bottom of the false flue ends abruptly and creates the appearance of a completely separate and protruding device that does not blend with the existing structures on the roof.

The Board discussed possible ways to mitigate the appearance of the structures such as altering the design so that the false flue is situated completely on top of the roof (as opposed to off the side of the roof) or to extend the false flue all the way down to the roof of the building as to create the appearance of one flue pipe.

The Board determined it would not waive the requirement of a bond for the removal of the wireless communication antennas and equipment. The Board agreed that the bond should be in the amount of \$20,000 and shall be submitted prior to the issuance of a building permit.

Because the applicant was not present, the Board determined that it would continue the public meeting in order for the applicant to consider their concerns and present an alternative design.

Mr. Woodhull made a motion to CONTINUE the public meeting to July 16, 2009, at 8:00 P.M. to review possible design modifications. Ms. Greenbaum seconded the motion and the Board VOTED to continue the public meeting to July 16, 2009 at 8:00 P.M.

Public Meeting: July 16, 2009

The Board reviewed a set of revised photo simulations ("proposed" photographs 1, 11 and 12 dated July 7, 2009) that show the false flue extending all the way down to the roof of the building in accordance with the recommendation of the previous meeting.

The applicant provided a revised set of plans, dated July 7, 2009, prepared by Dewberry-Goodkind, Inc., showing the false flue extending all the way down to the roof of the building. The false flue now includes a section of half pipe extending downward along the side of the existing penthouse.

The Board determined that the revised false flue design allows the structure to appear more compatible with the existing structures on the roof of the building.

The Board reviewed a sample bond provided by the applicant. The Board noted that the Bond incorrectly states that the Planning Board is responsible for the Special Permit and should be corrected to indicate that the Zoning Board of Appeals is responsible for the issuance of a Special Permit. The Board noted that the bond appeared to have a term of only one year. The Board determined that a condition of the approval should be the submission of a permanent removal bond.

The Board spent the remainder of the public meeting preparing findings and conditions if the Special Permit.

Findings:

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings, required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood in which it is proposed and is compatible with existing uses and other uses in the district. The proposal is suitably located because it has been designed to blend with the existing rooftop structures and mechanical equipment. The proposed wireless communication antennas are proposed to be located on an existing structure. The proposal is compatible with existing uses in the area because there are other wireless communication antennas located on existing structures on St. Brigids Church on North Pleasant Street and the Amherst College smokestack on College Street.

10.382, 10.383 and 10.385 – The proposal will not constitute a nuisance due to air pollution, lights or visually offensive structures and accessories. There will be no lights associated with the proposed antennas. The antennas have been designed such that they will be not visible and will be enclosed in a false flue constructed of a non-reflective, matte finish and revised design of the false flue will be similar in appearance to other existing rooftop structures.

10.384 - Adequate and appropriate facilities will be provided for the proper operation of the proposed use. The applicant has submitted a structural analysis by a licensed engineer indicating that the existing penthouse structure is structurally sound and capable of supporting the proposed antennas, false flue and equipment cabinets. The proposal included documentation which indicates the maximum permissible emissions are below those required by the Federal Communication Commission (FCC). No other modifications to the roof are required and the facility is accessible using the buildings existing elevator system.

10.387 – The proposal provides convenient and safe movement within the site and in relation to adjacent property. The wireless communication devices are accessible only to authorized personnel via the building's existing elevator system. Any vehicles associated with Pocket Communication employees will park in the existing parking area on the property.

10.391 – The proposal protects, to the extent feasible, unique or important natural, historic or scenic features. The proposal provides for the placement of wireless communication antennas on an existing structure, thereby reducing the likelihood of the creation of new wireless communication towers. The proposal includes placing the antennas within a false flue designed to be similar in appearance to existing structures on the roof. The Amherst Historical Commission reviewed the proposal and did not have any recommendations regarding the proposed design or use.

10.393 -The proposal provides protection of adjacent properties by minimizing the intrusion of lighting because there is no lighting associated with this application.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it promotes the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst. The proposal assists in the provision of necessary communications capacity, filling in gaps in service in the downtown area. The proposal promotes the general purpose of Section 3.340.2 of the Zoning Bylaw by co-locating the wireless antennas on an existing structure and designing the false flue so that it is similar in appearance to other existing structures on the roof of the building.

Zoning Board Decision

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit, ZBA FY2009-00037, to allow the placement of three wireless communication antenna within a false flue and equipment on top of an existing building, The Clark House, under Section 3.340.2 of the Zoning Bylaw, at 22 Lessey Street (Map 14A, Parcel 63, R-G, MPD and Dickinson National Historic Register District) as requested in the application of Youghioghenny Communications Northeast, LLC d/b/a Pocket Communication, with conditions.

THOMAS SIMPSON

HILDA GREENBAUM

ALBERT WOODHULL

FILED THIS _____ day of _____, 2009 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2009.

NOTICE OF DECISION mailed this _____ day of _____, 2009
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2009,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2009-00037, to allow the placement of three wireless communication antennas within a false flue and equipment on top of an existing building, The Clark House, under Section 3.340.2 of the Zoning Bylaw, at 22 Lessey Street (Map 14A, Parcel 63, R-G, MPD and Dickinson National Historic Register District) as requested in the application of Youghioghenny Communications Northeast, LLC d/b/a Pocket Communication, with the following conditions:

1. The wireless communication antennas and associated equipment shall be built in accordance with the plans prepared by Dewberry-Goodkind, last revised on July 7, 2009 and stamped approved by the Board during the public meeting of July 16, 2009.
2. The wireless communication antennas shall be enclosed in the false flue shroud, the exterior of which shall be a matte, non-reflective color similar in appearance to the existing smokestack vent flues on the roof;
3. The wireless communication equipment cabinets shall be of a color similar to, and compatible with, the exterior of the existing roof top penthouse.
4. The wireless communication facility shall be managed in accordance with the Management Plan approved by the Board during the public meeting of July 16, 2009.
5. Any changes to the design, location or operation of the wireless communication facility shall be reviewed and approved by the Zoning Board of Appeals at a public meeting.
6. Prior to the issuance of a Building Permit, the applicant shall submit a permanent removal bond in the amount of at least \$20,000 dollars to cover the cost of demolishing and/or removing the structures to the Planning Department and the Building Inspections Department and thereafter be on file with the Zoning Board of Appeals. The AM Best rating of the company providing the removal bond shall also be submitted.
7. Youghioghenny Communications Northeast, LLC d/b/a Pocket and/or its affiliates shall be responsible for compliance with all statements made in the materials submitted to, and approved by the Board on July 16, 2009.
8. There shall be no signs erected except for signs required under applicable state and federal laws and any emergency or warning signs.
9. Should the ownership of the antennas change from Youghioghenny Communications Northeast, LLC d/b/a Pocket Communication or its affiliates, the new owner shall appear before the Zoning Board of Appeals at a public meeting to review the Special Permit.
10. All structures and equipment associated with the wireless communication facility shall be removed within one (1) year of cessation of the use and shall be removed in accordance with the conditions of the removal bond.

THOMAS SIMPSON
Amherst Zoning Board of Appeals

DATE